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**LIFE INSURANCE COMPANY
OF NORTH AMERICA**
d.b.a. CIGNA GROUP INSURANCE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

DEBORAH VENTO,) Case No.: C 08-02128 JL
Plaintiff,)
v.)
LIFE INSURANCE COMPANY OF) JOINT REPORT RE: RULE 26(f)
NORTH AMERICA d.b.a. CIGNA GROUP) CONFERENCE OF THE PARTIES
INSURANCE; AND DOES 1 THROUGH 100,) State Court Filing: March 25, 2008
Defendants.) Federal Removal: April 24, 2008
Scheduling Conference: July 30, 2008

**TO THE COURT AND TO ALL INTERESTED PARTIES AND THEIR
ATTORNEYS OF RECORD HEREIN:**

Pursuant to Federal Rule of Civil Procedure 26(f), the following is a report regarding the Conference of the Parties held on Wednesday, July 9, 2008 between Michael Brisbin of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, on behalf of Defendant Life Insurance Company of North American (hereinafter “LINA”) and Timothy Fricker of Fricker & Mellen & Associates on behalf of Plaintiff Deborah Vento (hereinafter “VENTO”).

On the above given date, the parties conferred to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a) (1), and to develop a proposed

1 discovery plan that indicates the parties' views and proposals concerning the following:
2

3 1. **Jurisdiction and Service:** Jurisdiction is conferred pursuant to 28 U.S.C.
4 sections 1332, 1391, 1441 and 1446 on the grounds that there is complete diversity of citizenship
5 between Plaintiff VENTO who is a citizen of California and a resident of Alameda County,
6 California, and LINA who is a resident of Pennsylvania, with its principal place of business in
7 Philadelphia, Pennsylvania. Defendant LINA was served on April 2, 2008 and removed this
8 matter on April 24, 2008. No additional parties need to be added or served.

9 2. **Facts:** Plaintiff VENTO filed a First Amended Complaint, and jury demand,
10 alleging Breach of Contract and Bad Faith in the Superior Court of Alameda on March 25, 2008.
11 She claims entitlement to continued disability benefits due to chronic lower back pain and
12 condition. On June 21, 1999 VENTO submitted a claim for disability benefits. At the time she
13 was 46 years old (DOB: 10/9/52) and worked for the City of Menlo Park as an Administrative
14 Assistant. On August 30, 1999, LINA approved VENTO'S LTD benefits. She subsequently
15 received \$2,364.00 per month, subject to her continuing disability. In 2005 & 2006 LINA
16 revisited whether VENTO remained disabled according to the terms of the Policy. LINA
17 requested records from VENTO'S treating doctors and requested a FCE, TSA, LMS and
18 conducted surveillance. Based on the findings of the FCE, TSA, LMS and surveillance, LINA
19 terminated VENTO'S disability benefits on January 8, 2007.

20 3. **Legal Issues:** Plaintiff VENTO contends she remains disabled and is unable to
21 perform all the material duties of any occupation for which she may reasonably be qualified
22 based on education, training or experience. Plaintiff further contends that despite significant
23 medical evidence, LINA unreasonably denied Plaintiff VENTO'S claim and upheld its denial on
24 an appellate review in November 2007.

1 Defendant disputes that Plaintiff is entitled to additional disability benefits which she
2 seeks under the subject long term disability policy, specifically benefits from January 8, 2007
3 through the present. Defendant believes its evaluation subsequent to the payment of some
4 benefits, shows Plaintiff is no longer totally disabled and/ or eligible for benefits under the terms
5 of the Policy. Defendant further disputes its actions were or are malicious, oppressive, or
6 deceitful such that Plaintiff is entitled to punitive damages.
7

8 4. **Motions:** No motions were filed. Defendant will file a Motion for Summary
9 Judgment or Summary Adjudication if the matter cannot be resolved before any necessary filing
10 deadline. Defendant may also file a motion to bifurcate the punitive damages from the breach of
11 contract and breach of implied covenant of good faith and fair dealing. No other motions are
12 anticipated.
13

14 5. **Amendment of Pleadings:** None are contemplated by either party.
15

16 6. **Evidence Preservation:** The entire claim file from LINA has been provided to
17 its counsel and it will be produced forthwith to VENTO'S counsel minus any privileged
18 documents or information. LINA has not destroyed any documents or erased any information.
19

20 7. **Disclosures:** The Parties agree to complete their initial disclosure no later than
21 Wednesday, July 30, 2008 due to vacations and other conflicts. Both Parties anticipate timely
22 compliance with this deadline. The initial disclosure will include the following:
23

24 (1) the name and, if known, the address and telephone number of each individual likely to
25 have discoverable information that the disclosing party may use to support its claims or defenses,
26 unless solely for impeachment, identifying the subjects of the information;
27

28 (2) a copy of, or a description by category and location of, all documents, data
compilations, and tangible things that are in the possession, custody, or control of the party and
that the disclosing party may use to support its claims or defenses, unless solely for
impeachment;
29

(3) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(4) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

8. **Discovery:** Discovery has yet to be completed.

Plaintiff's Statement: Subject to receiving the claim file in this matter from Defendant, Plaintiff VENTO anticipate taking the depositions of Defendant LINA'S employees; the person most knowledgeable regarding the investigation and evaluation of Plaintiff's claim; the person most knowledgeable regarding the denial of Plaintiff's claim; and the person most knowledgeable regarding the review and/or evaluation of Plaintiff's sickness and/or injury. Plaintiff also intends to propound multiple sets of Special Interrogatories, Request for Admissions, and Requests for Production of Documents; and serve multiple subpoenas for the production of records from various third party custodians of record.

Defendant's Statement: Subject to receiving documents from VENTO, Defendant anticipates taking the deposition of Plaintiff VENTO and VENTO'S treating doctors and others who examined her, including but not limited to, Chiropractor Nancy Newbold, Dr. Lorraine Page, Dr. Mary Larson, Dr. Duc Nguyen, and any other treating doctor who has treated VENTO since her disability benefits were terminated. Defendant also anticipates requesting additional records from those involved in the care or treatment of VENTO, as well as serving special interrogatories and request for additional documents.

1 The parties agree that discovery should not be conducted in phases; that no changes
 2 should be made in the limitations on discovery imposed by the FRCP or by local rule; and that
 3 no other limitations on Discovery should be imposed.

4 9. **Class Actions:** This matter does not involve a class action.

5 10. **Related Cases:** There are no related cases.

6 11. **Relief:** Plaintiff VENTO did not specify in her Complaint the disability benefits
 7 and damages she seeks. Defendant LINA calculated the disability benefits at issue as follows:
 8 Monthly Benefit - \$2,364.00 (*No offsets because Vento worked for City of Menlo Park and there*
 9 *is no SSDI*); Past Due (2/3/07 – 7/3/08) - \$38,060.40; Future not discounted - \$264,768.00; and
 10 Total Past Due + Future not discounted - \$302,828.40 based on VENTO'S claim that she is
 11 entitled to additional benefits to age 65 as the Policy provides (*See page 7 of the Policy, attached*
 12 *to the Complaint as Exhibit A*). Plaintiff also seeks bad faith and punitive damages (*See Prayer*
 13 *in Complaint*), as well as attorney's fees which will be incurred to obtain the disability benefits
 14 (*See, paragraph 19, Complaint*). Defendant seeks its cost of suit.

15 12. **Settlement and ADR:** In accordance with FRCP 16(c), the parties elect to
 16 participate and use the Court appointed resolution proceeding to assist in resolving the dispute as
 17 authorized by statute or local rule:

18 *Plaintiff selects Settlement Procedure* [Judicial dispute resolution proceeding - mediation
 19 (Local Rule 16)]

20 *Defendant selects Settlement Procedure* [Judicial dispute resolution proceeding (Local
 21 Rule 16)]

22 The Parties agree the deposition of Plaintiff, her primary treating physician and of LINA
 23 employees might be necessary.

24 13. **Consent to Magistrate Judge for All Purposes:** Neither Plaintiff nor Defendant
 25 consent to a Magistrate Judge for all purposes. The required Declination to Proceed Form is
 26 being filed concurrently with this Rule 26 Report.

27 14. **Other References:** This case is not suitable for binding arbitration. It also is
 28 unnecessary to appoint a special master or the judicial panel on multi-district litigation.

15. **Narrowing of Issues:** The Parties anticipate that they will be better able to

1 formulate and simplify the issues and eliminate any frivolous claims or defenses prior to the date
2 set for trial. The Parties anticipate that they will be better able to obtain admissions of fact and
3 of documents which will avoid unnecessary proof, stipulations regarding the authenticity of
4 documents, and advance rulings from the court on the admissibility of evidence, during
5 discovery and prior to the date set for trial. Both issues will be addressed during discovery and
6 preparation of the case.

7 **16. Expedited Schedule:** The Parties do not believe this case can be handled on an
8 expedited basis because of the number of out of state depositions that will be required if this
9 matter can not be resolved through court appointed mediation. Defendant LINA will have to
10 compete with VENTO'S treating doctors schedules and will need to obtain any updated records
11 prior to the depositions. Plaintiff will be required to travel to Philadelphia or Dallas, or both, to
12 complete the depositions of LINA employees, and the individuals retained to perform the FCE,
13 TSA, and LMS.

14 **17. Scheduling:**

15 The parties agree that the Court should enter a scheduling order that limits the time for:

16 (1) **Rule 16(b) - Joining other parties and amending the pleadings:** Plaintiff and
17 Defendant agree and propose August 29, 2008, as the last day to file motions for such relief;

18 (2) **Rule 16(b) - Filing motions:** Plaintiff and Defendant agree and propose that all
19 pretrial motions other than in limine motions be filed no later than Monday, June 22, 2009;

20 (3) **Rule 16(b) - Completing Discovery:** As this matter is currently in the preliminary
21 stages of discovery, it is requested that adequate time be allowed for the discovery stage as many
22 of the suggested deponents are out of state. The parties anticipate that discovery should be
23 completed by Monday, May 11, 2009;

24 (4) **Rule 16(b) - Setting Pre-trial Conference and Trial dates:** The Parties agree that
25 the Pre-trial Conference (PTC) should be set for Monday, August 3, 2009 and TRIAL should be
26 set for August 18, 2009.

27 **18. Trial:** Plaintiff demanded a jury trial. The expected length is 10 to 14 days given
28 the number of witnesses involved and the issues related to whether plaintiff could perform a
sedentary job beginning in 2007. The Parties agree and request a trial date of August 18, 2009.

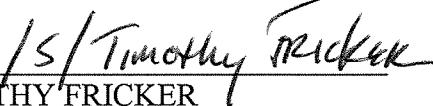
1 **19. Disclosure of Non- part Interested Entities or Persons:** Plaintiff VENTO filed
2 her Certificate of Interested Entities or Parties on Wednesday, July 16, 2008. VENTO knows of
3 no one, other than herself, who has a financial interest in the subject matter in controversy.
4 VENTO seeks past and future disability benefits, interest thereon, general damages, special
5 damages and punitive damages.

6 Defendant LINA filed its Certification of Interested Parties on April 24, 2008. It has no
7 financial interest other than its corresponding costs and fees for this litigation. LINA is a
8 subsidiary of CIGNA Corporation and was formed in 1956 by the Insurance Company of North
9 America, a CIGNA predecessor.

10 **20. Other:** Nothing additional needs to be discussed.

11
12
13 Dated: July 23, 2008

FRICKER & MELLEN & ASSOCIATES

14 
15 _____
16 TIMOTHY FRICKER
17 Attorney for Plaintiff
18 DEBORAH VENTO

19 Dated: July 23, 2008

20 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

21 By: 

22 ADRIENNE C. PUBLICOVER
23 MICHAEL K. BRISBIN
24 Attorneys for Defendant
25 LIFE INSURANCE COMPANY OF NORTH AMERICA
26 d.b.a. CIGNA GROUP INSURANCE